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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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In the Matter of)
)
Amended Petition for Rulemaking)
Of PetroCom License Corporation) RM-9718
To Amend Parts 21 and 74 of the)
Commission's Rules with Regard to)
Licensing in the Multipoint Distribution)
Service and the Instructional Television)
Fixed Service for the Gulf of Mexico)

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**REPLY COMMENTS OF
RIG TELEPHONES INC. dba DATACOM**

RIG TELEPHONES INC. dba DATACOM ("Datacom"), by its attorneys, hereby submits its reply comments in the above-captioned proceeding.

We note initially that the comments in this proceeding show universal opposition to the proposal submitted by PetroCom License Corporation (PetroCom) – not counting PetroCom's own very brief comments. The commenters all have recognized the overly self-serving nature of PetroCom's petition, and we are confident that the Commission will as well.

1. Comments of Bachow/Coastel

Datacom agrees with and fully supports the comments submitted by Bachow/Coastel. Bachow/Coastel raises the issue of the appropriate Commission Bureau to conduct this proceeding. While MDS/ITFS services are regulated by the Mass Media Bureau,¹ in the wake of the Two-Way Order it appears that these services may become

¹ Section 0.61(a) of the Commission's Rules provides that the Mass Media Bureau's duties and responsibilities include processing "applications for authorizations in radio and television services, including conventional and auxiliary broadcast services (other than

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similar to two-way wireless communications services, and thus should be regulated by the Wireless Telecommunications Bureau (WTB). With regard to the Gulf of Mexico in particular, PetroCom's WillNet64+ system, for example, is operating on these frequencies as a full-fledged equivalent to cellular telephone service. It is clear that the PetroCom Petition for Rulemaking seeks to establish Rules for a two-way wireless service in the Gulf, under which its WillNet64+ system might have the opportunity to become permanently licensed. In this light, this proceeding would more appropriately be conducted by the WTB, or at least with WTB input. Indeed, the Commission's Rules make clear that WTB "Advises and makes recommendations to the Commission, or acts for the Commission under delegated authority, in all matters pertaining to the licensing and regulation of wireless telecommunications." 47 CFR §0.131(a). We note that simply because the service PetroCom proposes will operate on the same frequencies as MDS and MMDS, and the service is *labeled* an MMDS service, this does not mean that it is a true MDS or MMDS service.² The needs in the Gulf are far different from communications needs existing on land, which is why PetroCom is seeking significant changes to the MDS Rules for application to the Gulf. PetroCom's changes and its intended use render this a different type of service that appears to be outside the scope of the Mass media Bureau's delegated authority.

2. Comments of PetroCom License Corporation

Datacom does not agree with the comments of PetroCom. PetroCom's comments, like its petition for rulemaking in this proceeding, are self-serving and

international broadcast services) and multi-point and multi-channel multipoint distribution services." 47 CFR §0.61(a).

misleading. As demonstrated to the Commission in repeated filings, PetroCom is operating its WillNet64+ system as a fully commercial system, something far outside the scope of the *developmental* authority under which the system was set up.³ PetroCom has further violated the terms of its license by failing to disclose developmental data⁴ and by operating unlicensed “response” stations⁵.

Not surprisingly, PetroCom’s comments in this proceeding are devoted mostly to asking the Commission, yet again, to extend indefinitely its developmental licenses until some unspecified future date after an auction has occurred and a system has been built. PetroCom claims this is necessary because of the delay caused by the need of a developmental licensee to “first deal with a rulemaking process for competitive bidding rules to govern the service that has been developed through its efforts.” PetroCom Comments, pg. 2. But while asking the Commission to hold an auction of the MDS/ITFS frequencies in the Gulf, PetroCom proposes wholly unfair and hence unworkable auction rules. Perhaps PetroCom does not really want an auction after all, or at least not any time soon, as it already seems to have been given exclusive authority to operate in the Gulf, *for free*, under its never-ending developmental license. In any case, PetroCom’s claim that its developmental efforts to date somehow entitle it to be allowed to operate up to

² For example, land mobile users operating on frequencies also assigned for broadcast use are not considered broadcasters, and are regulated by WTB rather than the Mass Media Bureau.

³ Motion for Cancellation of PetroCom’s Developmental Authorizations (February 25, 1999); Reply to Opposition (April 16, 1999); Letter opposing PetroCom’s request for modifications of developmental licenses (April 30, 1999); Letter opposing extension of developmental authority (May 25, 1999); Opposition to PetroCom’s Petition for Waiver (June 3, 1999); Renewed Motion for Cancellation of Developmental Licenses (August 13, 1999).

⁴ Motion to Compel Disclosure of Developmental Data (August 13, 1999).

⁵ Motion for Issuance of Show Cause Order (August 13, 1999).

and beyond the time of an auction – as some sort of reward, perhaps – are unsupported and contrary to law.

The Commission's Rules make clear that a developmental licensee is to be given no advantage or preference in becoming a permanent licensee. Once a system has gone beyond the developmental stage and is being commercialized, as is the case with PetroCom's WillNet64+ system, the developmental license must be cancelled, or not renewed. Allowing PetroCom to continue to commercialize its system between now and the time of an auction of the spectrum would, as explained in DataCom's initial Comments, give PetroCom an unfair and unwarranted advantage in any auction, contrary to the Commission's Rules and hence subjecting the auction to potential legal challenge. To protect the sanctity of the auction process, as well as the developmental licensing process, the Commission should immediately cancel PetroCom's developmental licenses, and move forward to create workable auction rules.

3. Comments of the Wireless Communications Association International

Datacom applauds the work of the Wireless Communications Association International (WCA) in preparing comments on this proceeding. Datacom agrees with WCA's comments regarding the self-serving nature of the PetroCom petition, but disagrees with portions of WCA's comments. WCA opposes auctioning the MDS/ITFS frequencies in the Gulf of Mexico on several grounds, arguing (1) there is no commercial need for service on these frequencies in the Gulf; (2) that use of these frequencies in the Gulf will cause unavoidable interference to land-based systems along the Gulf Coast; and (3) that operators of systems in BTAs along the Gulf Coast have some sort of protected right to broadcast their own interference out over the Gulf waters and hence the

Commission can not license any operator in the Gulf. Datacom disagrees with WCA on these issues. In addition, Datacom disagrees with WCA's suggestion that the Gulf should be divided into multiple geographic service areas.

a. There is a need for additional frequencies in the Gulf of Mexico

The major providers of communications services in the Gulf of Mexico, including Datacom, appear to be interested in obtaining these frequencies, and are expected to participate in an auction. From Datacom's perspective, additional frequencies are needed in order to continue and expand service to customers in the Gulf, for both voice and data applications. The customer base in the Gulf waters consists largely of drilling platform operators as well as ship operators and these customers tend to be high volume users of communications services. In particular, customer demand for data services is expanding and these frequencies are necessary to meet this demand.

Indeed, even WCA recognizes the importance of and demand for these frequencies to provide service in the Gulf, as it asks the Commission to develop auction rules that will make it easier for its own members to participate, e.g, WCA suggest that the area is too big for a single BTA and that there should be multiple BTAs so that land operators can pick and choose among the BTAs in making their bids. If WCA truly believes that there is no demand for these frequencies in the Gulf, then why is it so concerned that its own members might not be favored in an auction?

b. Interference From Gulf Operations Need Not Harm Land Operators

Unlike WCA's members, Datacom has more than 30 years of experience in operating wireless communications systems over waters in the Gulf of Mexico. In addition to its wealth of "on-the-job" experience with frequency propagation, Datacom

has sponsored and participated in third party propagation studies, as have other providers in the Gulf. Based on this experience and knowledge, it is safe to say that while frequency propagation behaves differently over Gulf waters than over land, those differences can be predicted and controlled. Formulas and equations have been developed for predicting propagation paths, and these formulas work for MDS and ITFS frequencies. As a result, communications systems can be and are operated in the Gulf waters without causing interference to land operations.

WCA's suggestion that "16.7 million people residing in the BTAs that border the Gulf of Mexico [could] be jeopardized" is misleading.⁶ To a large extent, these 16.7 million people live nowhere near the locations of customers in the Gulf waters, i.e., the offshore drilling platforms. A very large portion of these 16.7 million people reside in the State of Florida, for example, where there are no offshore platforms at all. Further, the coastline of Louisiana, offshore of which the majority of platforms are located, consists entirely of swampland, where very few people reside. Experience in the cellular arena shows that only a few spots along the entire coastline of the Gulf have experienced any interference worth mentioning, e.g., some of the barrier islands off of Mississippi. These isolated problems can be identified and dealt with, without unnecessarily hamstringing operations in the entire gulf.

c. Land Operators do Not Have Protected Rights Over Gulf Waters

WCA spends several pages of its comments suggesting that BTAs along the Gulf Coast that were won in the auction came with rights to broadcast interference out over the Gulf waters. The suggestion is based in part on the notion that auction winners paid more for the Gulf coast BTAs because there was no BTA in the Gulf itself. But simply

because the Commission did not include a Gulf of Mexico BTA in the last auction does not mean that the Commission can never do so. The Gulf Coast BTA winners' rights are defined by their licenses, and those licenses do not include any promise of an adjacent exclusionary zone or extraordinary rights to cause interference outside the BTA boundaries.

d. The Gulf of Mexico Should Not be Divided Into Smaller BTAs

The Gulf of Mexico should be licensed as a geographic unit, rather than subdivided into smaller BTAs. WCA's suggestion to the contrary would result in "cherry-picking" and would frustrate the intent of building a wireless local loop serving the entire Gulf. In addition, the low population of the Gulf does not justify subdividing the BTA. Further, the customers in the Gulf, the drilling platforms and ships, do not stay at fixed locations, but move about, and would be forced to switch service providers, depending on where they moved, if there were not a Gulf-wide BTA. Finally, in light of WCA's desire that its members be allowed to continue unfettered broadcast of interference into the Gulf waters, it is predictable that some Gulf Coast BTA operators may enter an auction for subdivided Gulf BTAs more with the intent of "locking up" adjacent airwaves to serve as a permanent interference buffer, rather than to bring WLL service to the Gulf.

4. The Commission Should Establish an Industry Working Group

Because the Gulf of Mexico is such a unique service area, with special technical and structural problems, the Commission should consider establishing a working group consisting of interested industry participants to assist in writing reasonable, fair and workable rules for an auction of spectrum in the Gulf of Mexico. Datacom would ask to

⁶ WCA Comments, pg. 8.

participate in such a group. Datacom respectfully encourages the Commission to include WTB in such a group based on the extensive experience WTB has in regulating wireless telecommunications services. Failure to do so may result in rules that are inconsistent with or unfair in light of the rules for other wireless telecommunications services.

5. Conclusion

For the foregoing reasons, the Commission should create rules for licensing MDS and ITFS frequencies in the Gulf in accordance with the above discussion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew Plache", with a stylized flourish at the end.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Reply Comments were served this 27th day of September, 1999, by sending a copy thereof by first class U.S. mail, postage prepaid, to the following:

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